IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5231 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATYAJITSINH GAEKWAD

Versus

RAKESH M PATEL

Appearance:

MR KS JHAVERI for Petitioners

MR BS PATEL for Respondent No. 1

MR KM PATEL for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 04/07/2000

ORAL JUDGEMENT

Rule. Mr. B.S. Patel, learned counsel for Respondent No.1 and Mr. K.M. Patel, learned counsel for Respondent No.2 respectively waives service of rule.

With the consent of learned counsel for the parties, this petition is taken up for final hearing.

2. The members of the JCT Workers Union is a registered Trade Union under the Trade Unions Act, 1926, registered on 14th October, 1998 with Registrar of Trade Unions. Before the trade union was registered in 1998, the office bearers were selected. According to the constitution and rules of the union, general meeting is required to be held each year in the month of January or February to elect office bearers and members of the managing committee for the current year. Accordingly the Secretary and President of the union was under an obligation to hold the general meeting in January or February to elect the office bearers and members of the managing committee for the year 2000. However, one group of the union apprehending that the existing General Secretary or the President may not call for the general meeting, issued a notice to the General Secretary on 28-1-2000 for holding the general meeting for election of office bearers as well as managing committee members for the year 2000. The requisition was given to the General Secretary under the signature of more than 500 members of the union. The General Secretary was requested to hold the election within fifteen days. However till 12-2-2000 no general meeting was called by the General Secretary, and therefore, the members of the union consisting more than 500 members issued a notice on 12-2-2000 calling such a meeting and accordingly notice was issued to all the members. It is alleged by the majority members of the union consisting of more than 500 members that, after receipt of the notice dated 12-2-2000 the general Secretary of the other group filed an application on 14-2-200 intimating the Registrar of the Trade Unions that on 24-12-1999 the general election had been held and in that election office bearers and executive members were elected. However, no intimation was given to the rival group of the union and accordingly the rival group issued notice on 12-2-2000 for holding general meeting on 20-2-2000 and notice was issued to all the members of the union. The rival group seeking election gave a paper publication in 'Sandesh' on 19-2-2000 specifying that on 20-2-2000 general election will be held wherein the office bearers and executive committee members will be elected. Accordingly on 20-2-2000 the meeting was held by the rival group consisting of more than 500 members and in that meeting office bearers of the union as well as executive committee members were elected after complying with the procedure of law. The respondent Company JCT Electronics Limited recognised the office bearers of the rival faction consisting of more than 500

members and did not recognise the office bearers of the members of the executive committee who were elected by the other group in a meeting held on 24-12-1999. After the elections were held on 20-2-2000, the other group who allege that they have been elected in a meeting held on 24-12-2000 moved an application before the Registrar, Trade Unions on 22-3-2000 raising the issue that the other group claiming to be more than 500 members had no authority to call for the general meeting held on 20-2-2000 and the said meeting is illegal and have no force. They claimed that the election was properly held on 24-12-1999 and the executive members elected in the said meeting are legally entitled to represent the union as its office bearers and members of the executive committee. Accordingly a dispute was raised claiming the power of the union by two rival groups. The Registrar, Trade Unions referred the dispute to the Industrial Court at Vadodara. Along with the main application, the office bearers alleged to have been selected in the meeting dated 24-12-1999, filed a special application for an interim order to recognise the office bearers and members of the executive committee by the respondent Company, and to derecognise the office bearers alleged to have been elected in the meeting dated 20-2-2000. The Industrial Court, Vadodara, called for the documents of both the elections from the parties and after hearing learned counsel of both the parties, and after perusing the documents, came to a conclusion that he was finding it difficult to come to a conclusion whether the meeting dated 24-12-1999 or the meeting dated 20-2-2000 was legal or illegal without taking oral and documentary evidences. The Industrial Court also held that, to come to a decision about the legality or validity of the meeting of 24-12-2000 or 20-2-2000 will take a long time and therefore he passed an ad interim order for holding fresh election and in the meantime he has allowed the office bearers alleged to have been elected in the meeting dated 24-12-1999 to continue as such.

3. I have heard Mr. Zaveri, learned counsel appearing on behalf of the members of the union representing more than 500 members and the office bearers elected in the meeting dated 20-2-2000. Also heard learned counsel Mr. B.S. Patel on behalf of the office bearers who are alleged to have been elected on the basis of the election dated 24-12-1999. I have also heard Mr. K.M. Patel, learned counsel appearing on behalf of respondent No.2 JCT Electronics Limited.

4. Mr. Zaveri, learned counsel for the petitioners submitted that the Industrial Court has committed an

illegality in passing the order for fresh election as the 500 members of the union after giving requisition to the General Secretary called the election by a notice dated 12-2-2000 and the election was held on 20-2-2000 after following all legal procedures and since the majority of the members joined the election and elected the office bearers of the members of the executive committee, there is no reason to hold a fresh election. Learned counsel also submitted that the Industrial Court could have passed an order for election had he come to a definite finding that both the election of 24-12-1999 and the election held on 20-2-2000 are held to be illegal and void. Learned counsel accordingly submitted that the Industrial Court should not have passed the order for fresh election or should not have allowed the office bearers to continue any further alleged to have been elected in the meeting dated 24-12-1999 as there was no election held on 24-12-1999. Learned counsel also submitted that the earlier General Secretary received requisition made by more than 500 members of the union on 28-1-2000, and when the General Secretary did not call the general meeting , they have issued a notice for general election on 12-2-2000 and in addition paper publication was also given in the newspaper 'Sandesh' on 19-2-2000 regarding the meeting to be held on 20-2-2000. It is also submitted that in the meeting more than 500 members were present and they have duly elected office bearers and members of the executive committee and the respondent No.2 Company also recognised the office bearers and executive committee who were elected in the meeting dated 20-2-2000. Learned counsel accordingly submitted that the Industrial Court should not have allowed the office bearers alleged to have been elected in the meeting dated 24-12-1999 and thus an illegality has been committed by the Industrial Court. He has also submitted that the Industrial Court is also not right in ordering fresh election upon the union, which is without jurisdiction.

5. Mr. B.S. Patel, learned counsel appearing on behalf of the office bearers of the union alleged to have been elected in the meeting dated 24-12-1999 submitted that the meeting called by the rival members of the union on 20-2-2000 is illegal and they have no right to call for the meeting of 20-2-2000, as the general meeting has already been held on 24-12-2000 and in that meeting the office bearers and members of the executive committee had already been elected by the members of the union. Learned counsel accordingly submitted that, to maintain industrial peace the Industrial Court thought it fit and proper to prove the majority of the rival group in a

democratic way by means of election and in the meantime the Industrial Court has also allowed the office bearers and executive members elected in the meeting of 24-12-1999 to continue as such . The Industrial Court therefore has not committed any illegality or jurisdictional error.

6. Mr. B.S. Patel,learned counsel also submitted that, according to the constitution of the union, the rival group is required to issue 15 days notice to the members for calling a general meeting, but this has not been followed by the rival group and their meeting held on 20-2-200 in pursuance of the notice dated 12-2-2000 which falls short of 15 days and therefore the meeting cannot be said to be a legal one.

7. Mr. K.M. Patel, learned counsel appearing on behalf of respondent No.2 the Company has submitted that the Company has perused the registers and after being satisfied that the office bearers elected in pursuance of the meeting dated 20-2-2000 being properly and legally elected office bearers and members, they have been recognised for negotiating with the Company. Learned counsel further submitted that the management has no knowledge about the meeting held on 24-12-1999 and therefore they do not recognise office bearers alleged to have been elected in a meeting dated 24-12-1999.

8. I have considered the submissions of learned counsel of all the parties. I have also gone through the order passed by the Industrial Court on 23-5-2000 in Reference (T U) 3/2000. The question before the Industrial Court was whether the election dated 24-12-2000 is legal and valid or the election of 20-2-2000 is legal or valid,and in the meantime whether any interim order is required to be passed. It appears that the Industrial Tribunal has come to the conclusion that for deciding this issue much time will be required as those questions cannot be decided without taking evidence, both oral and documentary. Consequently the Court came to a decision that for deciding the dispute between the rival groups it would be appropriate to decide the question of office bearers in a fresh election to be held in a democratic process, and accordingly the Court passed an order for holding fresh election and elect office bearers and executive members by secret ballot voting. In the meantime the Court has passed an order continuing the office bearers and members of the executive committee who were elected in the meeting dated 24-12-1999. Considering the facts of the present case, I am of the view that the Industrial Court has committed

serious error and illegality in passing the interim order. Because even if he is required to pass an interim order, he has to form a prima facie opinion about the legality or validity of the meeting dated 24-12-1999 and 20-2-2000. I do not think the Industrial Court has taken an appropriate decision in imposing an election on rival groups of the union. The duty of the Industrial Court was to decide whether the office bearers elected in a meeting dated 24-12-1999 is valid or legal or the office bearers elected in the meeting of 20-2-2000 is legal or valid, and to pass an appropriate order on the basis of his findings. Alternatively, if he finds both the meetings held on 24-12-1999 and 20-2-2000 are illegal, then of course he is entitled to pass an order for fresh election for election of the office bearers and executive committee members. But without coming to a decision even on prima facie that the election of 24-12-1999 is illegal or the election of 20-2-2000 is illegal, he has imposed the election on rival group of the union. In my view such an order should not have been passed by the Industrial Court. Consequently I am of the view that the order passed by the Industrial Court dated 23-5-200 should be quashed and accordingly the order of the Industrial Court Vadodara, passed in Reference (TU) No. 3/2000 is hereby quashed. In addition to quashing of the order of the Industrial Court, the following orders are passed for maintaining industrial peace between the employer and the employees.

1) The Industrial Court shall decide the Reference within a period of three months from today.

2) Till the Reference is decided, or in the event a fresh election is necessary, till the office bearers and the members of the executive committee are elected by such an election, the office bearers and members of the committee who are continuing since inception of the union in 1998, will continue as the office bearers and members of the executive committee.

3) The office bearers and executive committee members who are continuing since 1998 will discharge the day to day functions of the union. However they will not take any major decision or enter into settlement with the Company till the Reference is decided by the Industrial Court, Vadodara, or otherwise. However, if any dispute arises between the union and the management the office bearers may take up the matter with the competent authority.

4) The parties are directed to co-operate with the Industrial Court for early decision of the Reference, and shall not seek adjournment unless it is inevitable.

9. With the aforesaid observations and directions, present writ petition is disposed of. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 4-7-2000

(P.K. Sarkar, J)

/vgn